

[REDACTED]
Internal Revenue Service

District Director

Department of the Treasury

P.O. Box 2508
Cincinnati, OH 45201

Person to Contact:

Telephone Number

Refer Reply to:

Employer Identification Number:

Date: SEP 30 1997

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the Office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

[REDACTED]
[REDACTED]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b) (2) of the Internal Revenue code provides in part that:

A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely yours,

C. Ashley Bullard

C. Ashley Bullard
District Director

Enclosures: 3

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Enclosure I

FACTS:

The information submitted indicates that you were incorporated under the laws of [REDACTED] on [REDACTED]. Your Articles of Incorporation states that your purposes are exclusively for charitable, religious, educational and scientific within the meaning of section 501(c)(3) of the Code. Specifically, the purpose for which you are organized is: to operate a religious retreat.

[REDACTED] was created by members of a for-profit organization with the same name. The primary shareholders of the for-profit organization are [REDACTED] and [REDACTED] (husband and wife) and [REDACTED] and [REDACTED] (husband and wife). These members also control the non-profit organization.

The for-profit corporation was owned by [REDACTED] couples. Of the thirty-five couples, the [REDACTED] and the [REDACTED] together owned more than [REDACTED] percent of the corporation. The [REDACTED] couples of the for-profit corporation transferred the property to the non-profit organization, along with a mortgage signed only by the [REDACTED] and the [REDACTED]. The organization retained the same name as the for-profit successor. As of [REDACTED] the for-profit corporation was still in good status with [REDACTED]. The organization is using the same brochure used by the for-profit corporation.

Prior to the formation of the non-profit organization [REDACTED] and [REDACTED] owned and operated [REDACTED] on the premises of the for-profit organization. [REDACTED] is a for-profit gift shop that sells religious and country memorabilia.

[REDACTED] and [REDACTED] continue to own and operate the for-profit gift shop out of one of the buildings of the non-profit organization.

In your application you stated the organization was formed to provide spiritual guidance in the Christian context. More specifically the facility is used by church groups whose purpose is to gather for spiritual growth. The facilities are not limited to churches or other religious organizations. The facilities contain areas for social and recreational enjoyment.

There are no set programs or guidelines that an organization has to adhere to when conducting a retreat. [REDACTED] percent of the use of the facility is used by organizations that conduct their own retreats and/or activities. The balance of use is on programs conducted by one of [REDACTED] or [REDACTED] for an additional charge of [REDACTED] dollars per attendee per session. The facility is equipped with recreational items such as badminton, volleyball, swimming and fishing. The brochure used to promote the organization does not indicate that the purposes and programs conducted at your facilities must be of a religious nature. The brochure has information that the facility is available for all types of meetings and/or reunions such as family reunions, business meetings, or class parties.

[REDACTED]
[REDACTED]

Your organization has established set fees for the use of your facilities. The rental fees are as follows:

Non-church affiliated	\$[REDACTED]/first 4 people/night - \$[REDACTED]/person thereafter
Church	\$[REDACTED]/person/night
	\$[REDACTED]/person if they bring their own linen

[REDACTED] and [REDACTED] are now on the board of directors of the non-profit organization. They and the other former owners of the for-profit are current members of the non-profit. The non-profit indicates that it does not plan to attract new members. Article 2.03 of the Bylaws of the non-profit shows that the membership certificates issued will represent the shares of the corporation.

LAW:

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax:

Organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Regulations states:

In order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Section 1.501(a)(1)-1(c) of the Regulations states that the words "private shareholder or individual" in section 501(c)(3) refers to persons having a personal and private interest in the activities of the organization.

APPLICATION OF LAW:

Revenue Ruling 77-430, 1977-2 C.B. 194, granted exemption to an organization which provided a weekend retreat center open to individuals of diverse Christian denominations, at a rural lakeshore site. The retreats were conducted by ministers and priests of various denominations. The activities engaged in at the retreats were group and individual prayer, lectures, readings and meditation. Such activities were scheduled on an hourly basis throughout the day. Although no recreational activities were scheduled, there was a limited amount of free time in which the participants may relax and enjoy the facilities. No fees were charged for the retreats. The organization was supported by contributions from the general public and by donations from retreat participants.

Unlike the organization described in Revenue Ruling 77-430, you do not provide a structured environment in which your participants' are scheduled for religious activities throughout the course of their stay. Your organization does not restrict or monitor the participants time. You indicate that the fees charged for the retreat are considerably less than what local bed and breakfasts charge. However, you have not provided us with information showing that the fees charged are less than those charged by comparable facilities in the area. There is no indication that you are distinguishable from a for-profit retreat.

In The Schoger Foundation, Petitioner v. Commissioner of Internal Revenue, Respondent, 76 T.C. 380, the Tax Court held that the organization does not qualify for exemption from Federal income tax under section 501(a) as an organization described in section 501(c)(3). The nonprofit corporation owned and operated a mountain lodge that was characterized as a religious retreat facility. The lodge made available to its guests numerous activities, religious, recreational, and social, none of which were regularly scheduled or required. The religious activities at the lodge generally revolves around individual prayer and contemplation. Sunday morning services were occasionally held for guests who request them. No set fee or rate was charged to the guests. Instead, the organization solicited donations by placing cards in each unit with the daily cost associated with the participants' stay at the lodge.

Your organization is similar to the organization in the court case mentioned above. Your organization operates a facility, on a nondenominational basis, for churches and other organizations desiring to conduct religious and other activities, none of which are scheduled. Your organization lists the activities that can take place at your facilities but they are not regularly scheduled nor required. In the event that a religious organization or group requests leadership from your organization, there is an additional charge of [REDACTED] dollars per person. The organization in the court case solicits donations to cover its expenses.

Section 501(c)(3) of the Code also provides that no part of the net earning shall inure to the benefit of any private shareholder or individual.